BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector – 4, Panchkula-134109
Telephone No. 0172-2572299; Website: - herc.nic.in
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(E-Mail)

Appeal No.	**:**	**69/2023**
Registered on	**:**	**24.07.2023**
Date of order	**:**	**06.11.2023**

In the matter of: -

Appeal against the order dated 09.01.2023 passed by CGRF DHBVNL, Gurugram in case No 4399/2022.

M/s M. M. Casting Pvt. Ltd., Jajru Road, Jharsaintly, Ballabgarh, Faridabad, 121004. **Appellant**

Versus

1. The Executive Engineer 'Op.' Ballabgarh
2. The SDO (OP) Sub-Division, Ballabgarh

Respondents

Before:
Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:
Shri Praveen Kumar Agarwal, Advocate
Shri R N Kantiwal

Present on behalf of Respondents:
Ms. Sonia Madan, Advocate
Shri Vinay Singh Sikarwar, SDO 'Op.' Sub Urban, Sud Division, Ballabgarh

ORDER

A. M/s M.M. Casting Pvt. Ltd., Jajru Road, Jharsaintly, Ballabgarh, Faridabad, 121004 has filed an Appeal against the order dated 09.01.2023 passed by CGRF DHBVNL, Gurugram in case No 4399/2022. The appellant request for following relief as under: -

1. This appeal/representation is against the order dated 08.12.2022 passed by the First Grievance Redressal Authority, Dakshin Haryana Bijli Vitran Nigam, in Appeal No. DHV/A1/296/SDO/22/12 [Appeal Ref. Id. AAS22/338927 whereby the RTS appeal of the appeal has been dismissed.
2. It is respectfully submitted that order dated 08.12.2022 passed by the First Grievance Redressal Authority is wrong, against law, against facts, not sustainable in the eyes of law, unfair, unjustified and deserves to be set aside by accepting the appeal of the appellant.

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3. The facts of the case are that the complainant is running its industrial unit at Jajru Road, Jharsaintly, Ballabgarh, Faridabad, Haryana. The complainant received notice dated 29.09.2022 bearing Memo No. 6266 whereby the complainant was informed that during the audit amount of Rs. 80,37,647/- was found less billed in view of Nigam's Sale Circular No. 12/2021 dated 30.04.2021. It was also informed that charges to be levied were against Steel Furnace Charges at the rate of Rs. 45 paise per unit was charged less. It was also informed that difference which was less billed was pointed out and the complainant was asked to pay the aforesaid amount.

4. The complainant filed reply dated 06.10.2022 bearing Reference No. MMC/ DHBVN/ 22-23/01 (against receipt) making it clear that the aforesaid notice was issued in ignorance of the true and correct factual position and that claim of Rs. 80,37,647/- was not sustainable and the total claimed amount at Rs. 1,78,96,295/- levied at the rate of 45 paisa per unit on monthly bills on our bills starting from the year 2016, was not tenable.

5. It is respectfully submitted that as per Note No. 5, page 228 of Order dated 30.03.2021 of HERC referred to in Circular No. 12/2021 dated 30.04.2021, surcharge of 45 paisa per unit is applicable only for an arc furnace or a steel rolling mill. In case the unit is running neither arc furnace nor steel rolling mills, it is not liable to pay the surcharge. We never ran a steel rolling mill nor an arc furnace. As such, the alleged surcharge of 45 paisa per unit is not applicable to our unit.

6. To support our contention that our unit was not an arc furnace but induction furnace, we filed with the appeal before the First Grievance Redressal Authority copy of commercial invoice dated 25.10.2015 and the same is part of the appeal before this Hon'ble Authority. As per the said commercial invoice, we purchased Induction Furnace. As per circular No. 12/2021 dated 30.04.2021, no such surcharge can be levied on Induction Furnace.

7. In view of the aforesaid, it was absolutely wrong and contrary to circular No. 12/2021 dated 30.04.2021 to demand surcharge from our unit and the averment that audit amount of Rs. 80,37,647/- was found less billed in view of the Circular No. 12/2021 dated 30.04.2021 is contrary to law.

8. That we are not at all liable to pay the aforesaid amount. Rather the amount of Rs. 97,32,848/- already charged is liable to be refunded to us

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with interest @ 18% per annum since we were not at all under any obligation to pay the amount.

9. That the First Grievance Redressal Authority has under confusion observed that the appellant applied for connection in 'steel furnace category'. While observing so, the First Grievance Redressal Authority lost sight of the fact that surcharge under the relevant circular was chargeable only for 'arc furnace' or 'steel rolling mill' and none else. The appellant never run any arc furnace or steel rolling mill. For making the appellant liable for surcharge under the concerned circular, it was mandatory that the appellant either run 'arc furnace' or 'steel rolling mill'. In case it is neither arc furnace nor steel rolling mill, surcharge was not payable. The First Grievance Redressal Authority has failed to justify that 'steel furnace category' was at all liable for payment of surcharge. Further, the appellant clearly established that it running on 'induction furnace' purchased by it. Once it was established that the appellant was running on 'induction furnace' and not on 'arc furnace', holding the appellant liable for payment of surcharge is against all canons of law and justice. The circular nowhere permits charging of surcharge for 'induction furnace'.

10. In such circumstances, it is hereby prayed before this Hon'ble Authority to pass an order quashing the notice dated 29.09.2022, not to claim any amount on the basis of said notice and to refund the amount of Rs. 97,32,848/- to us together with interest @ 18% per annum. It is also prayed that order dated 08.12.2022 passed by the First Grievance Redressal Authority may also be set aside. Any other order which this Hon'ble Authority may deem fit in the facts and circumstances of the case, may also be passed in favour of the appellant.

B. The appeal was registered on 24.07.2023 as an appeal No. 69/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 07.08.2023.

C. Hearing was held on 07.08.2023, as scheduled. Counsel for the respondent SDO requested for the short adjournment to file reply being recently engaged. Acceding to the request, the matter was adjourned for 28.08.2023.

D. Hearing was held on 28.08.2023, as scheduled. At the outset, counsel for the respondent requested to grant two weeks' time to file reply as some clarification in the matter has been sought from the Head Office. Acceding to the request, the matter was adjourned for 19.09.2023.

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E. The counsel for the respondent SDO vide email dated 18.09.2023 has submitted reply which is as under: -

1. The present reply is being filed through S/Urban, SDO, DHBVNL, Ballabgarh, who is duly authorized to file the instant reply and is well conversant with the facts and circumstances of the case on the basis of knowledge derived from the record, on behalf of Dakshin Haryana Bijli Vitran Nigam (hereinafter to be referred as "Respondent" or "DHBVNL") to the captioned Appeal filed by M/s M.M. Casting Pvt. Ltd. (hereinafter to be referred to as "Appellant"). All submissions in the present reply are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.

2. The case of the Appellant in the present appeal was that amount was wrongly charged by DHBVN on account of under recovery of surcharge of 45 paise per unit relying upon Tariff Order issued by Haryana Electricity Regulatory Commission specifying Schedule of tariff for various categories of power supply.

3. The contention of the Appellant in challenging the recovery for surcharge on base tariff is that the surcharge was chargeable only for 'Arc Furnace' or 'Steel Rolling Mill' and none else whereas the Appellant company is operating 'Induction Furnace' on which the said surcharge is not applicable.

4. As regards the contention of the Appellant regarding non-applicability of the surcharge in the tariff applied for 'Induction Furnace' is concerned, it is submitted that Instruction no. 5.5 in the Sales Manual of DHBVN explicitly clarifies that the Tariff specified for Steel Furnace Power Supply is applicable to Induction Furnaces. A relevant extract of the said instruction is reproduced hereunder:

   Schedule of Tariff for – H.T. Industrial and Steel Furnace Power Supply:

   (i) Applicability: Applicable for load exceeding 50 kW to:

      (a) All industrial consumers including IT/Electronics/ Communication hardware manufacturing units. (SC 33/2013).

      (b) Arc furnaces and mixed load of Arc furnaces and steel rolling mills

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(c) All other steel furnaces (including induction furnaces and stainless-steel furnaces), Steel Rolling Mills (including cold rolling/ re-rolling, steel/ stainless steel mills), mixed load of such steel furnace and steel rolling mills."

In light of the foregoing stipulation in the Sales Manual, it is amply clarified that the contention of the Appellant is incorrect and not tenable.

5. However, without prejudice to the foregoing submission, it is submitted that the issue regarding applicability of surcharge over and above the base tariff has been settled by the Haryana Electricity. Regulatory Commission ('HERC') in Petition no. 70 of 2022. Vide final order dated 08.05.2023 passed in Petition no. 70 of 2022, it was clarified that the tariff determined by the Commission in Rs. per unit is inclusive of surcharge taking supply at 11 KVA from Discoms, for the period from 2017 to 2022. In light of such clarification, it has been decided to refund the amount recovered from the Appellant on account of recovery towards surcharge. The Respondent has already initiated process of adjustment of an amount of Rs. 43,56,395/- and the same shall be refunded to the Appellants in subsequent bills.

6. In light of the foregoing, the present appeal has become is fructuous and shall be disposed off as such.

F. Hearing was held on 18.09.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the respondent submitted that reply has been submitted after clarification from higher authority. Per contra counsel for the appellant stated that the reply is received today itself and no detail of the amount to be refunded has been provided. Accordingly, the respondent SDO is directed to provide the detail of the amount with advance copy to the appellant. The matter was adjourned for 04.10.2023.

G. The respondent SDO vide email dated 28.09.2023 submitted that the office has issued a notice regarding a short assessment pointed out by the audit party team of Rs. 283401/- same amount was charged by this office in the billing month of Aug 2022 and again next period audit team chargeable amount Rs. 8034647/- but this office Charged in this account of Rs. 4072994/- billing month Jan 2023 Total Amount Charged involved of Rs. (283401+4072994= 4356395/-) and the Charged amount Refunded of Rs. 4356395/- on dated 28.09.2023. It will be reflected in the month of Oct 2023.

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H. The counsel appellant vide email dated 03.10.2023 has submitted counter reply to the SDO's reply that the respondent has stated that it has refunded an amount of Rs. 43,56,395/- to the appellant. However, the amount charged in excess from the appellant is much more. Bill-wise details of excess amount charged from the appellant is being attached herewith. The said amount of Rs. 1,70,90,649/- is yet to be refunded by the respondent to the appellant.

Further, the respondent is still charging the excess amount of 30 paise per unit consumed in the bills. Even in the bill dated 01.10.2023 amount of 30 paise has been wrongly charged. The act of respondent in charging such amount of 30 paise per unit is the subject matter of the present appeal.

As such, the respondent is liable to be directed to refund the aforesaid amount of Rs. 1,70,90,649/- and not to charge this excess amount in future bills.

I. Hearing was held on 04.10.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the appellant submitted that Rs. 4356935/- has been refunded in the bill on account of 45 paise surcharge for arc-furnace. The second issue regarding charging of tariff @ Rs. 6.65 per unit instead of Rs. 6.95 charged in case of arc-furnace is still persists. Further, submitted that the appellant will file the rejoinder within two days. The respondent is directed to file point wise reply on the rejoinder, if any. The matter was adjourned for 25.10.2023.

J. The counsel for the appellant vide email dated 16.10.2023 submitted rejoinder, which is reproduced as under:

1. That the contents of Para No. 1 of the reply, as stated, are not correct and hence denied.
2. That the contents of Para No. 2 of the reply, as stated, are not correct. The case of the appellant as is evident from perusal of appeal is that the respondents had illegally recovered an amount Rs. 97,32,848/- and that they were further illegally demanding a sum of Rs. 80,37,647/- which was not payable by the appellant. The appellant is attaching herewith bill-wise details of the amount wrongfully charged by the respondents.
3. In reply to Para No. 3, it is correct that the respondents are charging the appellant on the rates of tariff applicable to 'Arc Furnace' or 'Steel Rolling Mill', whereas, the appellant is operating 'Induction Furnace' for which different tariff applies. The following table explains the tariffs applicable to 'Arc Furnace'/ 'Steel Rolling Mill' and 'Induction Furnace' –

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Circular No.	Applicable for the period	Tariff applicable to Arc Furnace/ Steel Rolling Mill (paise per unit)	Tariff applicable to Induction Furnace (paise per unit)
D-13/2015	01.04.2015 to 31.07.2016	645	615
D-25/2016	01.08.2016 to 30.06.2017	645	615
D-27/2017	01.07.2017 to 31.10.2018	695	665
D-31/2018	01.11.2018 to 30.04.2019	695	665
D-20/2019	01.05.2019 to 31.05.2020	695	665
D-14/2020	01.06.2020 to 31.03.2021	695	665
D-12/2021	01.04.2021 to 31.03.2022	695	665
D-14/2022	01.04.2022 to 31.03.2023	695	665
D-15/2023	01.04.2023 to Till Date	695	665

4. That the contents of Para No. 4 of the reply are absolutely incorrect and hence denied. The respondents are relying on Instruction No. 5.5 in Sales Manual of DHBVN. A perusal of page no. 6 of reply makes it clear that the Sales Manual is updated upto 30.06.2013 only and till that date the tariff for 'Induction Furnace' and 'Arc Furnace' were same. However, Sale Circular No. D-13/2015 modified the aforesaid Sales Manual so far as the rates of tariffs were concerned and 'Induction Furnace' was separated from the 'Arc Furnace'/ 'Steel Rolling Mill'. Only 'Arc Furnace' and 'Steel Rolling Mill' was to be charged at 645 Paise per unit vide point 3 in table and note no. 2 of Sales Circular No. D-13/2015. Same is the position with regard to the other sale circulars mentioned here-in-above in Para No. 3. As such, the bills after April 1st, 2015 could not have been charged at the old rates as relied on by the respondents in Para No. 4 of their reply. Rather, the modified tariffs will apply in view of the specific recital in the aforesaid Sale Circulars that the previous schedule of tariffs stood modified with each Sale Circular. In all the Sale Circulars referred to above, the 'Arc Furnace' and 'Steel Rolling Mill' are to be charged at different rates than other H.T. Industrial Supply Units including 'Induction Furnace'. Therefore, reliance of the respondents on unamended Sales Manual is totally misconceived.

5. In reply to Para No. 5, it is submitted that the respondents have adjusted an amount of Rs. 43,56,395/- in bill dated 01.10.2023 issued to the appellant. However, this act of the respondent partly rectifies their error and the balance amount remains to be corrected and the respondents are liable to be directed to refund the excess amount of Rs. 1,70,90,649/- to the appellant and not to charge the appellant at the rates of 'Arc Furnace'. The document supplied by the respondents to the appellant vide email

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dated 28.09.2023 i.e. Internal Revenue Audit Department, Half Margin bearing no. 066, Book No. 2021/30 (Memo No. 64 dated 31.08.2022) clearly says in the following words, "Not chargeable as consumer neither using Arc Furnace nor Steel Rolling Mill and consumer is using Induction Furnace as such amount is not chargeable." This clearly shows that appellant is not liable to pay tariff applicable to Arc Furnace/Steel Rolling Mill.

It is, therefore, most respectfully prayed that the appeal may kindly be accepted and the respondents be directed to refund the excess amounts.

K. The counsel for the respondent vide email dated 25.10.2023 submitted submission in pursuant to issued raised by the appellant in the rejoinder dated 13.10.2023, which is reproduced as under:

1. The present submissions are being filed through Vinay Singh, S/urban SDO, DHBVNL, Ballabgarh, who is duly authorized to file the instant reply and is well conversant with the facts and circumstances of the case on the basis of knowledge derived from the record, on behalf of Dakshin Haryana Bijli Vitran Nigam (hereinafter to be referred as "Respondent" or "DHBVNL") to the captioned Appeal filed by M/s M.M. casting Pvt. Ltd. (hereinafter to be referred to as "Appellant"). All submissions in the present reply are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.

2. The present submissions are being filed in pursuance to rejoinder filed by the Appellant where they have raised new claims much beyond the original pleadings which are not only based on wrongful reading of Schedule of Tariff but are also barred by law of limitation.

I. CLAIM OF RS. 1,70,90,649/- IS BEYOND THE PURVIEW OF THE INSTANT APPEAL -

3. At the outset, it is pertinent to mention that in the appeal filed by the Appellant, the prayer was limited to refund of Rs. 97,32,848/- and to not charge an amount of Rs. 80,37,647/-. The prayer of the Appellant is reproduced hereunder –

"In such circumstances, it is hereby prayed before this Hon'ble Authority to pass an order quashing the notice dated 29.09.2022 not to claim any amount on the basis of said notice and to refund the amount of Rs. 97,32,848/- to us together with interest @18% per annum. It is also prayed

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that order dated 08.12.2022 passed by the First Grievance Redressal Authority may also be set aside. Any other order which this Hon'ble Authority may deem fit in the facts and circumstances of the case, may also be passed in favour of the appellant.” *(Emphasis Supplied)*

4. In reply to the said appeal, it was mentioned by the Respondent that in light of the Order dated 08.05.2023 passed by Haryana Electricity Regulatory Commission (‘HERC’) in Petition no. 70 of 2022, it stands clarified that the surcharge of 45 paise is not leviable over and above the base tariff. In light of such clarification, an amount of Rs. 40,72,994/- which was deducted owing to addition of surcharge over and above the base tariff was duly refunded to the Appellant through adjustment in next bill.

5. In the Rejoinder now, the Appellant has claimed an amount of Rs. 1,70,90,649/- much beyond the original claim amount. The Claimant has computed the amount by unilaterally assuming that 11kV industrial tariffs applicable to the Appellant from 2016 till 2023, whereas there was no averment to that effect in the original complaint. The appellant cannot be permitted to add or supplement claim at the appellate stage. This is against the basic tenets of law. The said claim is therefore, clearly untenable on this short score alone.

II. CLAIM OF RS. 1,70,90,649/- IS BARRED BY LAW OF LIMITATION –

6. As elucidated hereinabove, Appellant in its Rejoinder has now raised claim for revision of tariff w.e.f. April, 2016 till September, 2023. The said claim preferred by the Appellant is time-barred in view of the fact that the complaint could be filed before the CGRF only in those cases whose date of cause of action is made within 2 years as per the HERC Regulations in vogue. As per section 42 (6) of the Electricity Act, 2003, a forum is established for the redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and accordingly, Forum and Ombudsman Regulations have been notified by HERC. As per Regulation No. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen. It is not the case of the Appellant that the applicable tariff did not came to their notice. The Appellant cannot invoke

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the provisions of the Electricity Act, 2003 to raise a stale and time-barred money claim. Thus, the claim of the Appellant is liable to be rejected on this short score as well.

III. CLAIM OF RS. 1,70,90,649/- IS BASED ON WRONGFUL READING OF SCHEDULE OF TARIFF AND IS NOT TENABLE EVEN ON MERITS -

7. The original contention of the Appellant in challenging the recovery for surcharge on base tariff is that the surcharge was chargeable only for 'Arc Furnace' or 'Steel Rolling Mill' and none else whereas the Appellant company is operating 'Induction Furnace' on which the said surcharge is not applicable. However, in the submissions now made, it is the case of the Appellant that another category of tariff is applicable to them i.e. 11 KV industrial tariff instead of the Arc furnaces/ Steel Rolling Mills Category.

8. At the outset, it is submitted that the Appellant had been a consumer of DHBVN since 1994. In fact, even on 24.04.2018, when the Appellant applied for extension of load, no intimation as regards change in category of supply was ever made. The said application categorically states that the additional load is required for furnace but did not specify the type of furnace. The dispute concerning the usage of induction furnace was raised belatedly when the recovery was sought by the Respondent. The category of tariff leviable on the Appellant was always in their knowledge but no objection to the same was raised as the said tariff had been rightly applied.

9. The alleged claim of Rs. 1,70,90,649/- raised by the Appellant now is essentially owing to application of wrong tariff unilaterally presumed by them contrary to the instructions/ Regulations specifying the applicability of tariff under various categories. The difference in the applicable tariff and the tariff claimed by the Appellant is depicted hereunder for ease of reference –

Year	***Tariff Applicable as per Respondent for 'HT Industrial - Arc Furnace/ Steel Rolling Mill' category (in Rs. Per Unit)***	***Tariff Applicable as per Appellant for 'HT Industrial - Supply at 11 KV' category (in Rs. Per Unit)***
April 2016-June 2017	*6.45*	*6.15*
July 2017-October 2023	*6.95*	*6.65*

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10. The Respondent had already submitted in its reply that Instruction no. 5.5 in the Sales Manual of DHBVN explicitly clarifies that the Tariff specified for Steel Furnace Power Supply is applicable to Induction Furnaces. A relevant extract of the said instruction is reproduced hereunder –

Schedule of Tariff for – H.T. Industrial and Steel Furnace Power Supply:

(i) Applicability: Applicable for load exceeding 50 kW to:

(a) All industrial consumers including IT/Electronics/ Communication hardware manufacturing units. (SC 33/2013).

(b) Arc furnaces and mixed load of Arc furnaces and steel rolling mills

(c) All other steel furnaces (including induction furnaces and stainless steel furnaces), Steel Rolling Mills (including cold rolling/ re-rolling, steel/ stainless steel mills), mixed load of such steel furnaces and steel rolling mills.” *(Emphasis Supplied)*

11. The Appellant, however wrongly contended in the Rejoinder that the said Salers Manual is up to 30.06.2013 and has been superseded by Sales Circulars issued subsequently. In this regard, it is hereby clarified that the Sales Manual and the Sales Circular are distinct commercial documents of the Nigam. Sales Manual is a book of reference for all the stakeholders of Nigam including those engaged in activities like release of connections, metering, billing, redressal of consumer grievances. Such Sales manual contain various instructions which are valid unless superseded by updated instruction on said matter specifically. The DHBVN had issued 2 Sales Manual since its inception i.e. Sales Manual - 2005 and 2013 Edition. The instructions contained therein unless substituted/ amended/ clarified are valid till now. It is therefore, wrong to stated that the said Sales manual is applicable up till 30.06.2013 only. This is substantiated from the fact that until today, various Orders of the Haryana Electricity Regulatory Commission makes reference to the Sales Manual which contained consolidated instructions on various issues. Even in tariff Orders, the instructions contained in said Sales Manual unless substituted/ amended/ clarified have been referred and applied.

12. Furthermore, the fact that the ‘HT Industrial - Arc Furnace/ Steel Rolling Mill category is applicable to the ‘Induction Furnace’ as well is also clarified in the Schedule for ‘*Applicability of Tariff Categories’* available on the Nigam website which amply clarifies that ‘H.T. INDUSTRIAL AND

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STEELFURNACE POWER SUPPLY' category is applicable to the 'Induction Furnace'.

13. The reliance of the Appellant on various Sales Circular is misplaced as the tariff category self-assumed by the Appellant retrospectively is incorrect. The said circular does not lend any support to the case of the Appellant as none of the circular specifies that 11 KV HT supply tariff is to be applied to 'Induction Furnace' Unit. The recital contained in the Sales Circular only speaks of superseding previous Circular on provisions contained therein. It does not therefore, modify the clarifications given earlier in the Sales Manual, for which no further clarifications have been given in any sales circular.

14. The reliance of the Claimant on hand written note which has been striked off on Half Margin memo dated 31.08.02022 is also incorrect as the wrong note written by an officer which has subsequently been corrected by striking the same off cannot be read to mean that tariff is to be applied to the Appellant against the instructions and the Regulations. The Appellant has conveniently omitted to intimate that the said note has been striked down. Even if a note was written by an officer under misconception, the same does not entitle the consumer to claim a different tariff category not applicable to them. The contentions of the Appellant is therefore, not worthy of any credence.

15. In light of the foregoing submissions, it is submitted that the claim of the Appellant for refund of Rs. 1,70,90,649/- is liable to be dismissed being untenable and meritless.

L. Hearing was held on 25.10.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the claimant filed its rejoinder on 17.10.2023 claiming an amount of Rs. 1,70,90,64/-. The Respondent filed submissions in respect of the said claim raising following objections –

a) Claim is beyond the purview of the instant appeal;

b) Claim is barred by law of limitation; and

c) Claim is based on wrongful reading of Schedule of Tariff and is not tenable on merits.

Both the parties made detailed submissions on the foregoing aspects. From the submissions made by the parties, following issues arise for

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adjudication. Whether the claim for reimbursement of bills paid for April 2016 till September 2023 barred by law of limitation?

and What is the tariff to be applied for induction furnace?

Counsel for the appellant further requested to file written submissions in the matter. The appellant may do so on or before 29.10.2023 with an advance copy to the respondent. Matter will be heard on 31.10.2023.

M. The counsel for the appellant vide email dated 27.10.2023 submitted written submissions, which is reproduced as under:

1. These written submissions are being filed in compliance of order dated 25.10.2023 passed by this Hon'ble Authority.
2. The present appeal arises out of order dated 09.01.2023 passed CGRF DHBVN in case No. 4399/2022. The said case before CGRF DHBVN was filed to challenge notice dated 29.09.2022 bearing Memo No. 6266 whereby demand of Rs. 80,37,647/- was raised by the respondents as less billed in view of Nigam's Sales Circular No. D-12/2021 dated 30.04.2021.
3. The appellant submitted reply dated 06.10.2022 to the aforesaid notice dated 29.09.2022 specifically taking a plea that the appellant could not be charged for arc furnace or steel rolling mills as it was running induction furnace. The appellant also annexed with the reply dated 06.10.2022 the bill for purchase of induction furnace. It is an admitted fact that the appellant has never changed the furnace.
4. That it is established on record from Sales Circulars filed by the appellant with re-joinder dated 13.10.2023, that the rates of tariff for arc furnace and induction furnace are different. The respondents cannot deny this fact. As such, the respondents have no legal entitlement to charge the amount. This fact is evident from the noting in document filed by the respondents on 29.09.2023 before this Hon'ble Authority relevant portion whereof reads as under:

   "Not chargeable as consumer neither using Arc Furnace nor Steel Rolling Mill and consumer is using induction furnace as such amount is not chargeable."

   Though the said noting has been cut subsequently but still substantiates the claim of the appellant being true. It has not been explained if the claim of the appellant is not true how come this noting was recorded on their own document by their own official.

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5. That charging of induction furnace with tariff of arc furnace is not only illegal but also unjust enrichment of the respondents. The principle of unjust enrichment applies in the present case as explained in Mahabir Kishore vs. State of M.P. (1989) 4 SCC 1 by the Hon'ble Supreme Court. In the present case it is unjust that the respondents retain the benefit for which they are not entitled. Failure of the respondents to restore the benefit of amounts wrongfully retained by them to make illegitimate gains is gaining advantage resulting in unjust enrichment. This cannot be permitted inasmuch as it violates the letter and spirit of the objects, reasons and philosophy of the Electricity Act, 2003, the hallmarks whereof include safeguarding of the consumers' interest based on "recovery of the cost of electricity in a reasonable manner".

6. The plea of limitation raised by the respondents in their submissions dated 25.10.2023 is also untenable. In Madras Port Trust v. Hymanshu International [(1979) 4 SCC 176], the Hon'ble Apex Court disapproved this practice by public authorities in paragraphs 2 and 3 in the following manner:

"2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the. purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should

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proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

3. We accordingly revoke the special leave granted to the appellant, and direct that the appellant do pay the cost of the respondents."

In Vidya Devi v. State of H.P. [(2020) 2 SCC 569], the Hon'ble Apex Court re-iterated the above principle thus:

"The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice."

In a welfare state, the State has the duty and obligation to protect the interests of citizens rather than taking undue benefits of its own wrongs to defeat legitimate rights of its subjects.

7. The plea of limitation is otherwise not available to the respondents. The repeated charging of wrong tariff in every monthly bill partakes the character of a "continuing breach" as contemplated under Section 22 of the Limitation Act, 1963. Thus, "a fresh period of limitation begins to run at every moment of the time during which the breach … continues". Since the breach continues on account of continued refusal to discharge liability towards the appellant, a fresh cause of action is constituted so long as the breach is recurrent and continues. The plea of bar of limitation raised by the respondents is without substance and must be rejected.

8. In Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan 1959 Supp (2) SCR476: AIR 1959 SC 798, the Hon'ble Supreme Court explained the concept of continuing wrong thus:

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful

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act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked."

9. Recently, in Samruddhi Cooperative Housing Society Limited v. Mumbai Mahalaxmi Construction Private Limited (2022) 4 SCC 103, a Bench of Hon'ble Supreme Court comprising Justice Dr. D. Y. Chandrachud & Justice A.S. Bopanna, re-iterated the above principle.

In view of the above submissions, it is respectfully submitted that the pleas taken by the respondents are totally untenable and the appeal deserves to be allowed by holding that the charge of tariff by the respondents for arc furnace despite the appellant running induction furnace in unsustainable and the benefits wrongly derived by the respondents be restored to the appellant and the respondents are restrained from such illegal charge in future.

N. The counsel for the respondent vide email dated 30.10.2023 submitted submissions in response to written submissions filed by appellant on 27.10.2023, which is reproduced as under:

1. The Appellant vide Written Submissions dated 27.10.2023 has made factually incorrect averments and raised contentions based on incorrect expounding of position of law, which has necessitated filing of present submissions by the Respondent. The contentions raised by the Appellant are responded upon hereunder -

A. Re: Incorrect averment - '*Sales Circular evince that the rate for arc furnace and induction furnace are different*' –

a) The Claimant has wrongly contended that the Sales Circular establish that rate for arc furnace and induction furnace are different. The Sales Circular referred to by the Appellant do not specify any provision regarding applicability of tariff. There is no instruction to the effect that the applicable tariff for induction furnace will be HT tariff for 11 KV supply. The said Sales Circular only specify different tariff for different categories. The Respondent has made specific submissions clarifying that the '*Applicability of tariff*' schedule provided

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on the Nigam website and Instruction 5.5. of the Sales Manual, 2013 clearly specify that the tariff for HT Supply 'A*rc furnace and Steel Rolling Mill category*' will be applicable for Induction furnace as well. The said instructions hold valid till today as the same have not been superseded/modified by any subsequent instructions to the contrary. Therefore, the contention of the Appellant to the effect that the Respondent cannot deny that the tariff for induction furnace is different is incorrect and meritless.

B. Bill paid for respective month is an independent and concluded transaction for which cause of action cannot be said to be 'continuing'-

b) With respect to the claim of the Appellant regarding reimbursement of bill amount w.e.f. 2016, the Appellant has wrongly contended that the cause of action for claiming the amounts pertaining to bills had been continuing and therefore, the claim raised is within limitation. The concept of 'continuing cause of action' is not applicable to instant case. It is well trite law that a continuous cause of action is applicable to a continuing transaction for which an action/complaint was raised by the affected party. Firstly, in the instant case, each monthly bill raised by the Respondent and paid by the Appellant is a concluded transaction. The raising of subsequent bill is a distinct and independent transaction. Therefore, claim for recovery *qua* a particular bill has to be raised considering the date of raising of that bill. Secondly, prime ingredient for a continuing effect of *cause of action* is the action by the affected party. If the Appellant had raised any grievance qua the bill paid in 2016-2020 within 2 years of the raising of the invoice and then subsequently filed a complaint, the arguments of the Appellant would have mode some sense. But in instant case, there was no grievance at all and in fact, complete silence on the part of the Appellant until 6.10.2022. It is well settled position of law that *if the wrongful act or omission causes an injury which is complete, there is no continuing wrong even though the damage resulting from the wrong may continue.*

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c) Reliance is placed upon the case of *Dhariwal Infrastructure limited v Tamil Nadu generation and distribution corporation limited* wherein the Central Electricity Regulatory Commission (CERC) held that "*wrongful application of tariff would only amount to continuance of the effects of an injury and not the* injury *itself. It is well settled that when the act of wrongdoer results in an injury which is complete, the wrongful act is not a continuing one even if the damage/effect resulting from the act may continue".*

d) Without there being any factum of injury being alleged by the Appellant, the *same* cannot be challenged at the own wish of the Appellant subsequently after expiry of limitation period and the limitation expired thereto cannot be said to have continuous effect. This is not the concept of continuing cause of action.

e) Further, it is not the case of the Appellant that they were not aware of the tariff charged or the bill was paid under any protest. Each bill payment is distinct transaction and alleged wrongful charge in bill without there being any action/complaint/representation in this regard does not extend cause of action for filing of suit/ for taking legal action for recovery.

f) Reliance in this regard, is placed upon the judgment of the *Hon'ble Delhi High Court titled North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. 2012 (129) DRJ 644*, wherein the Court rejected the claim raised by the Appellant qua overcharging by the Discom amounting to Rs. 23,90,162.51 being time barred. The Court categorically observed that the cause of action in the present case arose in the year 1999. However, the Appellant filed the complaint before the forum after the period of 7 years i.e, in 2009 and the same is therefore, barred by limitation. The relevant excerpts of the same are reproduced herein under for ready reference-

"*12. It is also relevant to note that the cause of action for filing a claim of recovery against the petitioner/NDPL had accrued in favour of respondent No. 1/Consumer way back in the year*

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1993. Even if, the period of three years is reckoned from the year 1999, i.e., the year when the connection was apparently converted from LIP to SIP, it would have taken the respondent No. 1/Consumer upto the year 2002 and not beyond that. Respondent No. 1, however, approached the MRTP Commission after a period of six years therefrom, i.e., in the year 2008 and it approached the CGRF after a period of seven years therefrom, i.e., in the year 2009. While the complaint of the respondent No. 1/Consumer filed before the MRTP Commission was rejected with liberty granted to it to approach the appropriate forum under the Electricity Act, it is a matter of record that respondent No. 1 approached the CGRF only in the year 2009, after about six months after the order of the MRTP Commission was passed. Even in the complaint filed before the CGRF, respondent No. 1 had again claimed that the period of limitation stood extended in its favour by predicating its case on the letter dated 21.07.2005 addressed by the petitioner to it.

13. The fact remains that for the purpose of calculating limitation, only the complaint filed by the respondent No. 1/Consumer is required to be examined and a perusal of the application filed by it before the CGRF reveals that the respondent No. 1 had itself acknowledged in paras 27 and 30 thereof that the petitioner/NDPL had converted the connection from LIP to SIP in March, 1999 and it had installed a new meter on the basis of completion of commercial formalities, that had taken place long ago. In such circumstances, the complaint of respondent No. 1/Consumer was not maintainable before the CGRF, the same being hopelessly barred by limitation." *(Emphasis supplied)*

C. Incorrect expounding of position of law – Distinguishing the judgments referred to by Appellant –

g) That the Appellant has cited the case of *Madras Port Trust v. Hymanshu International [(1979) 4 SCC 176]* to justify delay in approaching the CGRF after a period of 2 years seeking reimbursement of bill paid and alleging wrongful application of tariff in the year 2022. The facts of the above-mentioned

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case are entirely different from the facts of the present case. In the case of *Madras Port Trust*, the primary issue pertained to there fund of a certain amount of transit charge incurred by the Claimant and whether the claim of such a refund was within the period of limitation. The Hon'ble Supreme Court in the said case held when the plea for condonation is not well-founded, the Public Authority has a right to dismiss the same. The said case does not go into the factual matrix or the background of the case. Hence, it is unclear as to how the Appellant in the present case has cited it to further its claim in the present scenario. Moreover, in the present case, there was no grievance at all for alleged wrongful application of tariff for nearly 6 years despite being fully aware of the applicable tariff and bill being paid without any protest. Hence, the said case is not applicable to the facts of the present case.

h) Appellant has further cited the case of *Vidya Devi v. State of H.P [(2020) 2 SCC 569]*to further its justification that present case is a case of continuous cause of action and is not barred by limitation. In the said case, the Hon'ble Supreme Court held that forcible dispossession of a person from his property without following due process of law is violative of basic human right and constitutional right under Article 300-A. It further held that the land owners are entitled for compensation even if their written consent has not been taken before Land Acquisition. Hence, it was in this context that the Hon'ble SC held that contention for delay and latches cannot be raised in a continuous cause of action especially when the Claimant was unaware of whether his consent was taken or not. It further held that condonation of delay should be exercised judiciously and reasonably. As elucidated hereinabove, in the instant case, there were several distinct and independent transactions about which the Appellant is well aware of and has not raised any grievance. Had there been a case to the effect that they were unaware of the tariff applied earlier as copy of bill was never served upon them, the instant judgment may have been of

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some avail. But in the present facts and circumstances, the judgment relied upon by the Appellant is of no avail.

i) Another case relied upon by Appellant is the case of *Balakrishna Savalram Pujari Waghmare v. Shree DhyaneshwarMaharajSansthan1959 Supp (2) SCR476.*The findings in the said case in fact supports the case of the Respondent. While the Appellant is emphasizing that a continuing wrong was committed by the Respondent which led to continuous action, it has omitted to look into the legal conspectus in its entirety. A continuing wrong can be alleged if there is any grievance raised qua the 'wrong'. When no 'wrong' has been alleged by the Appellant in the limitation period, there is no furtherance of any cause of action. Furthermore, it was categorically held in the instant judgment that *"if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue".* In the said case, the primary issue pertained to whether a cause of action arose on the filing of the suit under Section 9 of CPC or on the decree of the said suit. However, the Hon'ble Supreme Court dismissed the claim of the Petitioner on the ground that they have filed their suit beyond time. Regardless of the distinct factual matrix, even the ratio of law cannot be applied to instant case.

j) *Further, the case of Samruddhi Cooperative Housing Society Limited v. Mumbai Mahalaxmi Construction Private Limited (2022) 4 SCC has been referred.* In this case, the Claimant had contended that if the cause of action is founded on a continuing wrong, it is within the period of limitation. The Hon'ble SC held that a failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. Salient distinguishing fact in the instant case is that the non-grant of Occupancy certificate is a single transaction for which grievance was raised by the allottees time and again. In the instant case however, each bill is a

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distinct transaction for which no grievance at all was raised by the Appellant within the limitation period. Without there being any factum of injury being alleged by the Appellant, the same cannot be challenged at the own wish of the Appellant subsequently after expiry of limitation period and the limitation expired thereto cannot be said to have continuous effect.

In view of the submissions made above, the claim of the Appellant is liable to be dismissed as untenable and meritless.

O. Hearing was held on 31.10.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the appellant submitted that Shri Parveen Kumar Aggarwal, Advocate is busy in the Hon'ble High Court and requested for short adjournment. Both the parties agree to fix date of hearing on 02.11.2023. Acceding to the request, the matter will be heard on 02.11.2023.

P. Hearing was held on 02.11.2023 as scheduled. Both the parties were present during the hearing through video conferencing. Pursuant to the Interim Order dated 25.10.2023, both the parties filed their written submissions on the following objections raised by the Respondent –

a) Claim is beyond the purview of the instant appeal;

b) Claim is barred by law of limitation; and

c) Claim is based on wrongful reading of Schedule of Tariff and is not tenable on merits.

It was observed in the Interim Order dated 25.10.2023 that from the submissions made by the parties, following issues arise for adjudication –

a) Whether the claim for reimbursement of bills paid for April 2016 till September 2023 barred by law of limitation? and

b) What is the tariff to be applied for induction furnace?

Admittedly, the complaint before CGRF was filed by the Appellant pursuant to notice of the Respondent dated 29.09.2022 whereby the complainant was informed that during the audit, an amount of Rs. 80,37,647/- was found less billed in view of Nigam's Sales Circular No. 12/2021 dated 30.04.2021. In response to the said notice, the Appellant vide letter dated 06.10.2022 stated '*you have claimed the remaining amount of Rs. 80,37,647/- making the total claimed amount at Rs. 1,78,96,295/- levied at the rate of 45 paise per unit on monthly bills on our bills starting from the year 2016*'. In the 5th para to said letter, Appellant further stated that "*Rather the amount of Rs. 97,32,848/-*

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already charged is liable to be refunded to us…" Respondent, in their reply, explained that pursuant to notice dated 29.09.2022, an amount of Rs. 40,72,994/- only was deducted, which also finds mentioned on the audit note with signatures of the SDO, Ballabgarh. Although the audit memo recorded that a sum of Rs. 80,37,647/- be charged after due verification of record, which was computed applying surcharge over and above the tariff being applied for HT Supply '*Arc furnace and Steel Rolling Mill'* category, a sum of Rs. 40,72,994/- alone was charged.

In the Appeal, following prayer was made by the Appellant –

"In such circumstances, it is hereby prayed before this Hon'ble Authority to pass an order quashing the notice dated 29.09.2022 not to claim any amount on the basis of said notice and to refund the amount of Rs. 97,32,848/- to us together with interest @18% per annum. It is also prayed that order dated 08.12.2022 passed by the First Grievance Redressal Authority may also be set aside. Any other order which this Hon'ble Authority may deem fit in the facts and circumstances of the case, may also be passed in favour of the appellant."

From the foregoing factual position, what emerges is that the cause for complaint emanated from notice dated 29.09.2022. Prior to the same, the Appellant has been a consumer of the Respondent since 1994 and was being billed at the tariff specified by HERC for HT Supply '*Arc furnace and Steel Rolling Mill'* category. This fact has not been disputed. The Respondent categorically stated that in light of the Order dated 08.05.2023 passed by Haryana Electricity Regulatory Commission ('HERC') in Petition no. 70 of 2022, it stands clarified that the surcharge of 45 paise is not leviable over and above the base tariff. In light of such clarification, an amount of Rs. 40,72,994/- which was deducted owing to addition of surcharge over and above the base tariff was duly refunded to the Appellant through adjustment in next bill.

The case now urged by the Appellant effectively was that they should have been billed for 11 KV HT Supply category instead as they are using Induction furnace and not Arc furnace and therefore, the excess tariff charged on account of change of category shall be refunded amounting to Rs. 1,78,96,295 minus Rs. 40,72,994/- i.e. Rs. 1,38,23,301/-. This dispute rests on the adjudication of the issue whether the Appellant is liable to pay tariff for HT supply Arc furnace and Steel Rolling Mill category or 11 KV category.

Both the parties vehemently argued on this issue. Counsel for the Appellant contended that the Sales circular do not specify Induction Furnace

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along with Arc furnace and Steel Rolling Mill and the Instruction no. 5.5 of Sales Manual, 2013 is superseded with the Sales Circular issued from time-to-time which do not categorically mention that Arc Furnace category includes Induction Furnace.

Per contra, Counsel for the Respondent stated that Sales Manual and the Sales Circular are distinct commercial documents of the Nigam. Sales Manual is a book of reference for all the stakeholders of Nigam including those engaged in activities like release of connections, metering, billing, redressal of consumer grievances. Such Sales manual contain various instructions which are valid unless superseded by updated instruction on said matter specifically. The DHBVN had issued 2 Sales Manual since its inception i.e. Sales Manual -2005 and 2013 Edition. The instructions contained therein unless substituted/ amended/ clarified are valid till now. Also, various Orders of the Haryana Electricity Regulatory Commission makes reference to the Sales Manual which contained consolidated instructions on various issues. Even in tariff Orders, the instructions contained in said Sales Manual unless substituted/ amended/ clarified have been referred and applied. Instruction no. 5.5 in the Sales Manual of DHBVN explicitly clarifies that the Tariff specified for Steel Furnace Power Supply is applicable to Induction Furnaces. 'HT Industrial - Arc Furnace/ Steel Rolling Mill category is applicable to the 'Induction Furnace' as well is also clarified in the Schedule for 'Applicability of Tariff Categories' available on the Nigam website which clarifies that 'H.T. Industrial and Steel Furnace Power Supply' category is applicable to the 'Induction Furnace'.

Considering submissions of both parties and after perusal of all document, it is observed that the category of tariff leviable on the Appellant was always in their knowledge but no objection to the same was raised until notice dated 29.08.2022. The audit objection raised in notice dated 29.08.2022 does not hold good in view of the Order of the HERC dated 08.05.2023. Instruction no. 5.5 of the Sales Manual, 2013 and the Schedule for 'Applicability of Tariff Categories' available on the Nigam website.

The reference on the Sales Circular is not of avail for ascertaining category of tariff to be applied for induction furnace as the said clarification is explicit from the perusal of Schedule of Tariff given by the Nigam read with Instruction 5.5 of Sales Manual, 2013 which has not been modified/amended/superseded by the contents of any sales circular issued subsequently and is therefore, valid till date. In light of this, the Appellant has been rightly billed for HT Industrial - Arc Furnace/ Steel Rolling Mill category.

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The Respondent has also raised objection with regard to claim being barred by law of limitation. In light of the observations made above, the finding on such objection may not be of any relevance. However, for the sake of clarification, it is stated that it cannot be accepted that Appellant was not aware of the tariff charged and admittedly, there was no protest for bill payment since 2016. This forum accedes to the contention of the Respondent that each bill payment is distinct transaction and alleged wrongful charge in bill without there being any action/complaint/representation in this regard does not extend cause of action for filing of suit/ for taking legal action for recovery. It is well settled that as per Regulation No. 2.24 (c) of the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2019, the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen. The contention of the Appellant that in this case cause of action was continuing is not correct as the different bill payments cannot be terms as a continuing transaction. The injury for the bill paid for respective month gets completed with the payment of the said bill even though the damage caused may continue. The judgment of the Hon'ble Delhi High Court relied upon by the Respondent titled North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. 2012 (129) DRJ 644 directly deals with the issue of limitation of raising complaint before CGRF under Electricity Act, 2003.

The Appellant however, in support of their contentions that the cause of action for bill is continuing and period of limitation shall not be considered in case of wrongful levy of tariff relied upon certain judgments. These judgments have been distinguished by the counsel for the Respondent. Brief distinct factual matrix of judgment referred by the Appellant is as under –

In Mahabir Kishore and ors. v State of MP Civil Appeal no. 1826 (N) of 1974, collection of 7.5% charge over auction money was declared and therefore claim made subsequent to such judgment was termed as 'mistake of law' coming to knowledge after judgment. In the instant case, no law/ tariff applicability has been declared invalid/ wrongful so as to term claim as consequence of 'mistake of law' or to extend the cause of action to the Appellant. The concept of 'unjust enrichment' also would creep in once it is held by any court that the application of category of tariff is against the law which is not the case here.

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In Madras Port Trust v. Hymanshu International [(1979) 4 SCC 176], there was admission to the effect that wharfage, demurrage and transit charges is payable and recommendation was also made from Assistant collector of customs. The Hon'ble Supreme Court in exercise of its discretion under Article 136 observed that the claim was a just claim already agreed to by Public Authority and in light of those peculiar facts, the plea of limitation was not accepted. This is certainly not the case here. The Respondent never agreed that the category of tariff applied was incorrect and the Appellant is liable for reimbursement of amount owing to wrongful category of tariff. Moreover, in the present case, there was no grievance at all regarding application of tariff for nearly 6 years and bill was being paid without any protest.

The case Vidya Devi v. State of H.P [(2020) 2 SCC 569] also has distinct facts. It is the case where an illiterate widow coming from a rural background was unaware of her rights and entitlement in law and did not file proceedings for compensation of land compulsory taken over by the State. It was in that facts that the Hon'ble Supreme Court did not accept the plea of delay and laches and observed that there is no limitation to exercise constitution jurisdiction to do substantial justice. Needless to state that the facts here are completely distinct. Appellant is a company running business of years and this forum is bound by the law of limitation as prescribed in the Regulations conferring jurisdiction on this forum.

Next case relied upon by Appellant is the case of Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan 1959 Supp (2) SCR476. This case as well has completely distinct factual background. The issue here was that the Pujari Waghmare had succeeded in both courts below in proving their rights as hereditary worshippers but the appeals were dismissed as the suit was filed beyond time. The issue here effectively was whether High Court is right in holding that Article 120 applies or Section 23 of Limitation Act will apply. Moreover, the said case reiterates the well trite law of continuing cause of action. It is well settled that if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. As stated above, the ratio of law does not apply to instant facts.

The case of Samruddhi Cooperative Housing Society Limited v. Mumbai Mahalaxmi Construction Private Limited (2022) 4 SCC was lastly relied upon by Appellant. In this, the Hon'ble Supreme Court held that a failure on the part of the builder to provide occupancy certificate is a continuing breach under the

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Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The facts of said case are clearly not related to instant case. Non-grant of Occupancy certificate is a single transaction for which grievance was raised by the allottees time and again. As stated above, each bill is a distinct transaction for which no grievance at all was raised by the Appellant within the limitation period. The limitation period expired with respect to each bill cannot be said to have continuous effect, more so when there was no protest regarding the same.

In view of the foregoing observations, it cannot be concluded that the claim of Appellant seeking reimbursement of bills for 2016-2018 is not barred by limitation.

Q. In view of the abovementioned facts and circumstances, as per Schedule of Tariff given by the Nigam read with Instruction 5.5 of Sales Manual, 2013, the Appellant has been rightly billed for HT Industrial - Arc Furnace/ Steel Rolling Mill category. Further, the audit memo recorded that a sum of Rs. 80,37,647/- be charged after due verification of record, which was computed applying surcharge of 45 paise per unit over and above the tariff being applied for HT Supply 'Arc furnace and Steel Rolling Mill' category, a sum of Rs. 4356395/- (Rs. 283401/- were charged by the respondent SDO in the billing month of Aug, 2022 and Rs. 4072994/- in the billing month Jan, 2023) alone was charged by the Respondent SDO and this total charged amount has been adjusted/refunded by the respondent SDO in the appellant account on dated 28.09.2023. The Appellant is however, at liberty to approach the respondent for reconciliation of billable units each month and amount charged as per Arc Furnace/ Steel Rolling Mill category. Any amount of surcharge over and above the tariff for Arc Furnace/ Steel Rolling Mill category, if charged, shall be refunded to the Appellant. The appeal is disposed of accordingly.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 6th November, 2023.

Sd/-
(Virendra Singh)
Dated: 06.11.2023 **Electricity Ombudsman, Haryana**

CC-

Memo. No. HERC/EO/Appeal No.69/2023/ 3342-48 **Dated: 07.11.2023**

1. M/s M. M. Casting Pvt. Ltd., Jajru Road, Jharsaintly, Ballabgarh, Faridabad, 121004. (Email rn@mmcastings.com , aggarwal_parveenkumar@yahoo.co.in).

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2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Head Office: Vidyut Sadan, Vidyut Nagar, Hisar -125005 (Email md@dhbvn.org.in).
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109 (Email lr@hvpn.org.in).
4. The Chief Engineer 'Op', Delhi Zone (Email ceopdelhi@dhbvn.org.in).
5. The SE 'Op' Faridabad (Email seopfaridabad@dhbvn.org.in).
6. The Executive Engineer 'Op.' Ballabgarh (Email xenopbalbgarh@dhbvn.org.in).
7. The SDO (OP) Sub-Division, Dakshin Haryana Bijli Vitran Nigam, Plot No. -106, Sector-58, Ballabgarh (Email sdoopsuburbanbalbgarh@dhbvn.org.in).

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